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10/783,076

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Frank Watts JR.

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ARMSTRONG WORLD INDUSTRIES, INC.
LEGAL DEPARTMENT
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EXAMINER

SIMONE, CATHERINE A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK WATTS, JR.,
GARY A. SIGEL, and
WILLIAM J. KAUFFMAN

Appeal 2008-4168
Application 10/783,076
Technology Center 1700

Decided: October 31, 2008

Before EDWARD C. KIMLIN, CHUNG K. PAK, and TERRY J. OWENS,
Administrative Patent Judges.

KIMLIN, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal from the final rejection of claims 34-49. Claim 34 is illustrative:

34. A coated freestanding film consisting essentially of:

a freestanding film having opposed first and second sides;

a print layer having a printed pattern or design, the print layer being disposed on the first side of the film; and

a discontinuous layer forming a pattern or design disposed on the second side of the film having a gloss level different from the gloss level of the second side of the film.

The Examiner relies upon the following references in the rejection of the appealed claims:

Bomboire	US 4,089,724	May 16, 1978
Schmidle	US 4,273,819	Jun. 16, 1981

Appellants' claimed invention is directed to a coated free standing film consisting essentially of a free standing film having a printed pattern or design on a first side of the film, and a discontinuous pattern or design on the second side of the film which has a gloss level different from the gloss level of the second side of the film.

Appealed claims 34, 38, 39, 41-43, 47, and 48 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bomboire. Claims 35-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bomboire. Also, claim 40 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bomboire in view of Schmidle. In addition, claims 45, 46, and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bomboire in view of Schmidle. Finally, claim 44 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bomboire.¹

¹ The Examiner notes that Appellants have not presented any arguments against the rejection of claims 35-37 under § 103 over Bomboire, the rejection of claim 40 under § 103 over Bomboire in view of Schmidle and the rejection of claim 44 under § 103 over Bomboire. We note that

Appellants have presented separate arguments only for claims 41 and 49. Accordingly, claims 34-40 and 42-48 stand or fall together.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter is unpatentable over the cited prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer.

Concerning the Examiner's § 102 rejection over Bomboire, Appellants do not dispute the Examiner's factual determination that the reference, like Appellants, describes a film having a printed pattern or design disposed on a first side of a film, and a discontinuous pattern or design disposed on a second side of the film having a gloss level different from the gloss level of the second side of the film. Indeed, Appellants acknowledge that the floor or wall covering of Bomboire "has all of the elements required by claim 34" (Reply Br. 5, last para.). However, it is Appellants' contention that support sheet 1 of Bomboire "falls outside the definition of free standing film" (*id.*). According to Appellants, the claim recitation "coated free standing film consisting essentially of" excludes the support sheet of Bomboire.

We are not in agreement with Appellants' interpretation of the scope of the appealed claims. Our review of the present Specification brings us to the conclusion that the claim language at issue, when read in light of the Specification, does not preclude the presence of a film or coating in addition to those recited in the claims. In particular, Appellants' Specification, at

Appellants have not disputed this Examiner's finding in their Reply Brief. Accordingly, we summarily affirm these rejections.

paragraph [0028], expressly states that “[o]ptionally, a web 28 may be laminated or affixed to the first side 14 of the film 12. The web 28 can comprise single or multiple layers.” Manifestly, Appellants’ Specification clearly teaches that a free standing film within the scope of the appealed claims may include another film, coating or web in addition to those specifically recited in claim 34. Consequently, we find no merit in Appellants’ argument that Bomboire’s support 1 is excluded from the appealed claims.

Moreover, since the claim language “consisting essentially of” limits the scope of the claims to the specified layers and those that do not materially affect the basic and novel characteristics of the claimed invention, we agree with the Examiner that Appellants’ Specification supports the Examiner’s finding that the claim language on appeal defines a free standing film that may include the support film 1 of Bomboire. Not only have Appellants not presented any evidence that the inclusion of Bomboire’s support would materially affect the basic and novel characteristics of the claimed invention, but Appellants’ Specification indicates quite the contrary. Appellants’ Specification expressly discloses that the claimed coated free standing film may comprise multiple layers in addition to those specifically recited in the claims.

We also find that the final product of Bomboire, including support film 1, meets the definition of a free standing film. While Appellants maintain that the Bomboire structure “falls outside the definition of free standing film because the Bomboire structure is not thin” (Reply Br. 6, first para.), it cannot be gainsaid that the term “thin” is relative in nature, and Appellants have advanced no rationale why the floor or wall covering of

Bomboire does not qualify as thin, especially since free standing films within the scope of the appealed claims may comprise web 28 having multiple layers.

Regarding separately argued claim 41, the claim does not require, contrary to Appellants' argument, that the film between the printed pattern and discontinuous layer comprises a plurality of film layers. As disclosed in the present Specification, the coated free standing film may comprise a plurality of webs 28 which correspond to the plurality of film supports 1 taught by Bomboire.

Appellants do not present additional substantive arguments with respect to the separate § 103 rejections, nor do Appellants rely upon objective evidence of nonobviousness.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(effective Sept. 13, 2004).

AFFIRMED

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